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14 *Synthes Spine Company, L.P.*  
*and Spine Solutions, Inc.*

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO**

19 <b>CALVIN TIMBERLAKE and</b>	)	CASE NO. CV 08 80067MISC
20 <b>KAREN TIMBERLAKE,</b>	)	
21 <b>Plaintiffs,</b>	)	CASE NO. 6-08-CV-0004 (S.D.
	)	Tex.)
22 <b>vs.</b>	)	
23 <b>SYNTHES SPINE COMPANY, L.P.</b>	)	<del>PROPOSED</del> ORDER
24 <b>Defendant</b>	)	GRANTING WITHDRAWAL
	)	WITHOUT PREJUDICE OF
	)	PLAINTIFFS' NON-PARTY
	)	SUBPOENA ON JAMES
	)	ZUCHERMAN, M.D.

26 **ORDER**

27 Plaintiffs Calvin Timberlake and Karen Timberlake and Defendant Synthes

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1 Case No. CV 08 80067 MISC  
[Proposed] Order Granting Withdrawal Without Prejudice of Plaintiffs' Non-Party  
Subpoena on James Zucherman, M.D.

1 Spine Company, L.P. (hereinafter collectively "the Parties") entered into a  
2 Stipulation of Agreement Regarding Plaintiffs' Subpoena for Records, which was  
3 filed with this Court on April 24, 2008 along with the Parties' Consent Motion for  
4 Stay of These Proceedings. Pursuant to the Parties' Stipulation of Agreement  
5 Regarding Plaintiffs' Subpoena for Records, Plaintiffs agreed to withdraw any  
6 non-party subpoenas issued, but not served upon the non-party at the time the  
7 Stipulation of Agreement was executed. Accordingly, the parties request  
8 withdrawal of the non-party subpoena issued upon James Zucherman, M.D.,  
9 without prejudice to refile, as it has not been served upon non-party James  
10 Zucherman, M.D. Further, the Parties have agreed that any previously imposed  
11 deadlines to Reply to Plaintiffs' Response to Synthes' Motion to Quash the  
12 Subpoena, without waiving any objections by Synthes' to the subpoena, are  
13 hereby moot.

14 Considering the withdrawal of the of the non-party subpoena issued upon  
15 James Zucherman, M.D., it is now unnecessary for the Court to go forward with  
16 the motion hearing scheduled for July 3, 2008 or to rule on the pending Motion to  
17 Quash that subpoena.

18 The Parties have agreed to confer in a good faith attempt to define the  
19 parameters of a reissued subpoena, without prejudice to the Plaintiffs' ability to  
20 refile the subpoena in a manner they consider to be consistent with the provisions  
21 of Fed. R. Civ. Pro. 45, and without prejudice as well to the rights of the  
22 Defendants, Synthes Spine Company, L.P., et. al, and any third parties  
23 subpoenaed within the jurisdictional confines of the United States District Court  
24 for the Northern District of California to take such action, including but not  
25 limited to objections under Fed. R. Civ. P. 45(c) and (d) to object to the scope of  
26 production to any reissued subpoena.

1 It is ORDERED that the subpoena that is currently the subject of  
2 consideration by this Court issued to James Zucherman, M.D. be and hereby is  
3 considered withdrawn by the Plaintiffs in accordance with the provisions of this  
4 Order, without prejudice to refile as set forth above and that the hearing  
5 scheduled for July 3, 2008 will no longer go forward.

6  
7 SIGNED this 23 rd day of June, 2008.

